



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 12, 1998

The Honorable Thomas B. Sehon  
Falls County District Attorney  
P.O. Box 413  
Marlin, Texas 76661

Letter Opinion No. 98-004

Re: Whether a justice of the peace located twenty miles from county depository may have his or her local bank wire the county funds to the county treasurer's account in the depository (RQ-959)

Dear Mr. Sehon:

A county officer is required by law to deposit county funds directly with the county treasurer. In a county with a population under 190,000, the county auditor may regulate the "speedy and proper" collection of county funds. We understand you to ask whether a Falls County justice of the peace who is located twenty miles from the county depository may have her local bank wire county funds to the treasurer's account in the county depository. We find nothing that precludes such a wire transfer, but we caution that the county auditor may have adopted regulations concerning the matter.

From the facts you have provided, we understand the wire transfer would eliminate the need to physically transport the funds to the county seat. You state that the Falls County depository is located in Marlin, the county seat. One justice of the peace works in Rosebud, which is located about twenty miles from Marlin. As you say, this justice wishes to "deposit" her fees, fines, and other money collected on behalf of Falls County in a bank located in Rosebud and have the money wire-transferred to the treasurer's account in the county depository. The Rosebud bank's fee for each wire-transfer is \$15.00.<sup>1</sup> You inform us that the Rosebud bank the justice proposes to use did not apply to become a county depository,<sup>2</sup> and we assume that any other bank located in Rosebud is likewise not a county depository.

Although you use the word *deposit* to describe the justice of the peace's transaction with her local bank, we assume you do not suggest that the justice would deposit the county funds into an account at the local bank. This office previously has determined that a justice of the peace may not deposit fines collected on behalf of the county into an account separate from the county depository.<sup>3</sup>

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<sup>1</sup>You suggest that the wire transfer would "save traveling expenses." While a wire transfer would eliminate the need to travel, the county still would have to pay the \$15.00 wire transfer fee.

<sup>2</sup>See Local Gov't Code § 116.023 (describing applications to be county depository).

<sup>3</sup>See Attorney General Opinion DM-396 (1996) at 8.

Moreover, any county funds held by a county officer must be deposited with the county treasurer.<sup>4</sup> Rather, we assume you to ask whether the justice may give her local bank the money to directly wire to the treasurer's account in the county depository, without "holding" the money in an account prior to the wire transfer.

We believe the justice may have the county funds wired from her local bank to the treasurer's account in the county depository unless the county auditor's regulations forbid it. Local Government Code sections 113.021 and 113.022 require a county officer to deposit county money with the county treasurer in a timely fashion.<sup>5</sup> The county treasurer is to keep all county funds in designated county depositories.<sup>6</sup> No statute of which we are aware precludes an officer from having the money wired to the treasurer's account in a county depository.<sup>7</sup> However, the county auditor may have adopted regulations under Local Government Code section 112.001 that affect the legality of the proposed wire transfers.

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<sup>4</sup>See Local Gov't Code §§ 116.002(a), .113; *see also id.* § 113.021(a).

<sup>5</sup>In a county with a population lower than 50,000, such as Falls County, *see* BUREAU OF THE CENSUS, UNITED STATES DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION: GENERAL CHARACTERISTICS: TEXAS 2 (1992) (population: 17,712), the county officer must deposit county funds with the county treasurer within seven business days or within the time period established by the county commissioners court. *See* Local Gov't Code § 113.022.

<sup>6</sup>See Local Gov't Code ch. 116 (detailing selection of county depositories).

<sup>7</sup>See *id.* § 113.021(b) (requiring county treasurer to deposit county funds in county depository "in a special fund to the credit of the officer who collected the money"). This office assumed in Attorney General Opinion H-183 that a county officer may transfer county funds to the treasurer's account; the officer did not have to transfer the funds to the treasurer in person. *See* Attorney General Opinion H-183 (1973) at 3-4. We see no reason to reconsider this assumption.

**S U M M A R Y**

A justice of the peace may have county funds wired from his or her local bank to the treasurer's account in the county depository unless the county auditor has adopted regulations restricting such a practice.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kimberly K. Oltrogge", with a stylized flourish at the end.

Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee